

STATE OF MICHIGAN
COURT OF APPEALS

LORI L. ROBLYER,

Plaintiff-Appellant,

v

JAMIE E. ROBLYER,

Defendant-Appellee.

UNPUBLISHED

July 14, 2005

No. 260051

Allegan Circuit Court

LC No. 03-033241-DM

Before: Murphy, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the judgment of divorce. Plaintiff challenges only the award of custody of the parties' five children to defendant. We affirm.

There are three different standards of review applicable to child custody cases. A trial court's factual findings, such as the existence of an established custodial environment and with regard to each factor affecting custody, are reviewed under the great weight of the evidence standard and will be affirmed "unless the evidence clearly preponderates in the opposite direction." *Vodvarka v Grasmeyer*, 259 Mich App 499, 507; 675 NW2d 847 (2003); *Fletcher v Fletcher*, 229 Mich App 19, 24; 581 NW2d 11 (1998), citing MCL 722.28. In reviewing the findings, this Court defers to the trial court's determination of credibility. *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000). A trial court's discretionary rulings, such as a court's determination on the issue of custody, are reviewed for an abuse of discretion. *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001). Further, pursuant to MCL 722.28, questions of law in custody cases are reviewed for clear legal error. *Fletcher, supra* at 24.

Plaintiff argues that the evidence presented at trial favored a custody award to her and that each of the child custody factors weighed in her favor, except for factor (i) (the reasonable preference of the child, if the court considers the child to be of sufficient age to express preference) on which matter plaintiff agrees with the trial court's assessment. We note that although the trial court did not state that an established custodial environment existed with plaintiff, the record shows that the children resided with plaintiff after her release from jail until the divorce hearing. We also note the trial court's statement that it found "sufficient clear and

convincing evidence . . . to change that environment.” Pursuant to MCL 722.27(1)(c), the trial court cannot change an established custodial environment unless “there is presented clear and convincing evidence that it is in the best interest of the child.”¹ Therefore, even upon a finding of an established custodial environment with plaintiff, the trial court concluded that defendant had met his burden to justify a change in custody.

Under MCL 722.23, a custody dispute must be resolved in the best interest of the child, with the court making its determination based on the factors set forth in that statutory provision. *LaFleche v Ybarra*, 242 Mich App 692, 700; 619 NW2d 738 (2000). The trial court is required to consider and explicitly state its findings and conclusions regarding each factor. *Foskett, supra* at 9. However, the court need not comment on every matter in evidence or declare acceptance or rejection of every proposition argued, or give equal weight to all factors, but may consider the relative weight of each factor as it is appropriate to the circumstances. *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994); *McCain v McCain*, 229 Mich App 123, 130-131; 580 NW2d 485 (1998).

We have carefully reviewed the lower court record and all of the testimony presented, scrutinized the trial court’s findings and the extent of the findings, analyzed the best interest factors relative to the evidence presented, and considered the arguments presented by plaintiff on each factor. Giving the required deference to the trial court, especially with respect to judging the credibility of witnesses, we conclude that the court’s findings on the various best interest factors do not mandate reversal as the evidence did not clearly preponderate in the opposite direction, that the court did not err in determining that there existed clear and convincing evidence to change the established custodial environment, and that the court did not abuse its discretion in awarding custody to defendant. Although the case presents a close call, reversal is unwarranted.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Pat M. Donofrio

¹ Prior to ruling on the best interest of a child, a trial court must determine as a matter of fact the existence of an established custodial environment. *Mogle, supra* at 197.